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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON**

KELLI GRAY, and all other similarly  
situated, )  
Plaintiff, ) Case No.: CV-09-251-EFS  
v. ) PLAINTIFF'S RESPONSE TO  
SUTTELL & ASSOCIATES; ) DEFENDANT'S STATEMENT of  
MIDLAND FUNDING, LLC; MARK ) FACTS RE MOTION FOR PARTIAL  
T. CASE, and JANE DOE CASE, ) SUMMARY JUDGMENT RE:  
husband and wife, KAREN HAMMER ) APPLICABLE STATUTE OF  
and JOHN DOE HAMMER ) LIMITATIONS  
Defendants. )

1. Suttell Defendants Fact #1. Disputed. Plaintiff denies she was issued a credit card “through First Consumers National Bank (“FCNB”).”

Plaintiff Gray applied to S  
PLAINTIFF'S RESPONSE TO  
DEFENDANT'S LR 56.1 STATEMENT OF  
FACTS - 1

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1 Spiegel at the Spiegel website. (Ct. Rec. 54). Plaintiff received  
2 statements which indicated that they were from "Spiegel" in large  
3 formatted type. The discovery responses from Midland Funding, LLC  
4 indicate that statements were sent as late as September 2004. (Ct. Rec.  
5 62-2, Exhibit 25). FCNB was ordered by the Office of Comptroller of  
6 Currency to cease and desist all account servicing on April 15, 2003.  
7 (Ct. Rec. 62-1, Exhibit 24, OCC order #2003-39). Further, the Suttell  
8 Defendants' Exhibit "A" is not an original signed affidavit, contains  
9 hearsay declarations that do not meet the ER 803(6) business records  
10 exception, and has some indication of irregularity in its preparation.  
11 The Suttell Defendants have not explained why the hearsay should be  
12 admitted. Plaintiff has objected to the admission and moved to strike  
13 Exhibit "A" attached to the Suttell Memorandum. (Ct. Rec. 60).

14 2. Suttell Defendants Fact # 2. Disputed. The Suttell Defendants misstate  
15 and misrepresent the Declaration of Plaintiff Kelli Gray filed in state  
16 court and attached to the Suttell Defendants Memorandum as Exhibit  
17 "B" (citing to paragraph 3, Ct. Rec. 34-2, ¶ 3). Paragraph three (3)  
18 does not say that Ms. Gray made charges to her "FCNB account",  
19 does not say that she was "receiving statements from FCNB", and  
20 does not say that she was "making payments to FCNB." Instead, Ms.  
21

1 Gray does not mention “FCNB” at all. Ms. Gray mentions only  
2 “Spiegel” throughout her declaration (not FCNB). Ms. Gray indicates  
3 that she purchased clothing from “Spiegel.” (Ct. Rec. 34-2, pp. 24-25,  
4 ¶3).

- 5 3. Suttell Defendants Fact # 3. Disputed. Ms. Gray does not dispute that  
6 at some point “she stopped making payments” to “Spiegel.” Plaintiffs  
7 have moved to strike “Attachment ‘A’” to the Suttell Defendant  
8 Memorandum. (Ct. Rec. 34-2, pp. 24-25).
- 9 4. Suttell Defendants Fact # 4. Disputed. Admit that the Suttell law  
10 office filed an action in Spokane County Superior Court on October  
11 27, 2008 for a debt. Midland Funding, LLC in its responses to  
12 discovery claims that it did not hire the Suttell law firm. Suttell  
13 Defendants cite to Exhibit “C” attached to Suttell’s Memorandum,  
14 which is the Complaint filed in State Court, which does not support  
15 the statement of facts. The Complaint is unverified and does not  
16 mention “FCNB” at all. Instead, the Complaint indicates that  
17 “Defendant has been the obligor of a certain credit card account” (Ct.  
18 Rec. 34-3, p. 28, ¶ 3). The Complaint does not identify the creditor at  
19 all, but instead calls the alleged obligation “certain” or “said credit  
20 card account.” (Ct. Rec. 34-3, p. 28).
- 21
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5. Suttell Defendants Fact # 5. Admitted. The State Court did not rule on Plaintiff's Motion.

Dated this the 2<sup>nd</sup> day of August, 2010.

*Michael D. Kinkley P.S.*

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**PLAINTIFF'S RESPONSE TO  
DEFENDANT'S LR 56.1 STATEMENT OF  
FACTS - 4**

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1 CM/ECF CERTIFICATE OF SERVICE  
2

3 I hereby certify that on the 2<sup>nd</sup> day of August, 2010, I electronically filed the  
4 foregoing with the Clerk of the Court using the CM/ECF System which will send  
5 notification of such filing to the following:  
6

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